


BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA
DOCKET NO. 2001-308-C - ORDER NO. 2002-209

APRIL 2, 2002

IN RE: Application by Network US, Inc., and Affinity Corporation for Approval of a Foreclosure Sale Asset Purchase Agreement.)))))	ORDER APPROVING FORECLOSURE SALE ASSET PURCHASE AGREEMENT AND EXPEDITED REVIEW
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This matter comes before the Public Service Commission of South Carolina (“Commission”) on the Application filed jointly by Network US, Inc. (“Network”) and Affinity Corporation, (“Affinity”) (collectively referred to as “Applicants”), requesting Commission approval of a Foreclosure Sale Asset Purchase Agreement (the “Agreement”) which took place on February 2, 2001. Under the Agreement, CAA, Inc. (“Sub”), a wholly owned subsidiary of Network, acquired substantially all of the telecommunications assets of Affinity, including but not limited to Affinity’s customer accounts, pursuant to a Uniform Commercial Code Foreclosure Sale under Wis. Stats. Section 409-504 (the “Acquisition”). The Application was filed pursuant to S.C. Code Ann. Section 58-9-310 (Supp. 2001) and the applicable regulations of the Commission. As part of its joint Application, Network and Affinity requested the Commission, retroactively and on an expedited basis, to approve the Agreement, Acquisition and the transfer of Affinity’s current customer accounts to Network, and disposition of the Application.

Network is a privately held Illinois corporation with principal offices located in Waukesha, Wisconsin. Affinity is a privately held Wisconsin corporation with principal offices also located in Waukesha, Wisconsin. Affinity is authorized to provide resold interexchange services in forty-eight states. Affinity was granted authority to provide telecommunications services in South Carolina pursuant to Docket No. 91-357-C on December 9, 1991. The Commission in Docket No. 91-357-C, Order 96-354 on May 17, 1996 approved a name change. In addition, the Commission in Docket No. 2001-302-C, Order No. 2002-218 dated March 22, 2002, granted Network US, Inc. d/b/a CA Affinity a certificate of public convenience and necessity to provide resold interexchange telecommunications services within the State of South Carolina.

Prior to consummation of the Acquisition on February 2, 2001 (the “Closing”), Affinity had been suffering financial difficulties and its customers were on the brink of experiencing disconnection of their telecommunications service. As a result, Network, through its wholly owned subsidiary, Sub, acquired the assets of Affinity in order to ensure uninterrupted service to Affinity’s customers. Simultaneous with the Closing, Sub merged with and into Network, its parent company. Due to the exigent circumstances which existed at the time of the Closing, Network acquired Affinity’s customer base even though it did not, at that time, have authority from this Commission to provide telecommunications services to Affinity’s customers. This Commission has subsequently granted authority to Network US., Inc. d/b/a CA Affinity to provide interexchange telecommunications services in South Carolina. In addition, Network arranged for Affinity to continue service to the affected customers pursuant to Affinity’s existing

authority in this State until such time as Network had obtained its own authority and the Commission had approved the Acquisition. The customers of Affinity had already been given the opportunity to switch their service from Affinity to a different carrier.

The technical, managerial and financial personnel of Affinity have been assisting with the transition and integration of the acquired Assets, and along with the technical managerial and financial personnel of Network, have continued to serve the transferred Affinity customers.

By letter dated August 13, 2001, the Commission's Executive Director instructed Network and Affinity to publish a prepared Notice of Filing in newspapers of general circulation in the areas affected by the Application. The purpose of the Notice of Filing was to provide notice of the Application to any interested parties and to advise interested parties of the manner and time in which to file pleadings to participate in the docket. Network and Affinity filed Affidavits of Publication as proof that it had complied with the instructions of the Executive Director. No Petitions to Intervene, letters of protest, or comments were received by the Commission with regard to the instant Application.

REQUEST FOR EXPEDITED REVIEW

As part of its Application, Network and Affinity requested expedited review and disposition of the joint Application due to Affinity's financial difficulties and in order to ensure that the transaction would be transparent to the affected customers with no interruption in service. After the return date expired with no intervention or opposition, Network and Affinity requested that the matter be scheduled for final disposition by the Commission at a weekly meeting. The parties waived their right to a hearing in the

matter. Along with the request for a waiver of the hearing, Network and Affinity filed verified testimony to support the Application. The matter was brought then to the Commission for consideration.

Upon consideration of Network and Affinity's request for final disposition at a regularly scheduled Commission meeting and the waiver of its right to a hearing in the matter, the Commission finds that expedited review should be granted. The Commission finds that notice of the Application was properly afforded to the public and that no interested person sought to become a party to the proceeding. The Commission finds that procedural due process was afforded in this matter and further finds that Network and Affinity made a knowing waiver of a formal hearing. Therefore, the Commission will consider the Application in the context of its regularly scheduled weekly meeting, with court reporter present, and for purposes of the expedited review, the Commission will deem the examination of the Application and verified testimony during the course of the Commission's regularly scheduled meeting with court reporter present as a hearing on this matter.

EXAMINATION OF THE APPLICATION AND VERIFIED TESTIMONY

According to the Application and the verified testimony of Brian Sledz, President, Network US, Affinity was granted a certificate of public convenience and necessity to provide interexchange telecommunications services in the State of South Carolina in Docket No. 91-357-C. In addition, he testified that Network US, Inc. d/b/a CA Affinity had applied to this Commission for a certificate of public convenience and necessity to provide interexchange services. Mr. Sledz testified that in accordance with the

Foreclosure Sale Asset Purchase Agreement on February 2, 2001, between Network and CAA, Inc., a wholly owned subsidiary of Network, Network acquired substantially all of the telecommunications assets of Affinity, including, but not limited to Affinity's customer accounts.

Mr. Sledz testified that following the acquisition, Affinity would continue to operate as a regulated entity pursuant to its present certifications, registrations, tariff requirements and rate structures, or on an unregulated basis, as provided by and pursuant to applicable law until such time as Network's application for certification has been approved. Mr. Sledz said the transfer has had and will have no adverse effect on customers in South Carolina, and was transparent to such customers. He said Affinity's South Carolina customers had maintained uninterrupted service and all Affinity customers who were current at the time had been given the opportunity to switch their service from Affinity to a different carrier. He said those customers of Affinity who chose not to switch their service to a different carrier continued to receive service from Affinity until Network had obtained its own certificate in South Carolina. Mr. Sledz offered that Network intended to notify all of Affinity's end users again of the event. Further, he stated the actual merger would be transparent to the customers of Affinity. The record reveals that Mr. Sledz has been an owner and operator of telecommunications companies for over ten years. He was the Founder and President of Discount Network Service, Inc. (DNS), a Chicago-based reseller of long distance services which was eventually sold to Network Long Distance, Inc. in October, 1995. Mr. Sledz had been responsible for the overall management and operation of DNS and had concentrated his

efforts primarily on managing all sales and marketing activities of the company. As President and Chief Executive Officer of Network US, Mr. Sledz is responsible for the overall management and strategic direction of the Company.

Upon review and consideration of the Application, the verified testimony of Mr. Sledz, and the applicable law, the Commission hereby issues its findings of fact and conclusions of law:

FINDINGS OF FACT

1. Network is a privately held Illinois corporation with principal offices located in Waukesha, Wisconsin.
2. Affinity is a privately held Wisconsin corporation with principal offices in Waukesha, Wisconsin.
3. Affinity was authorized to provide interexchange telecommunications services in South Carolina in Docket No. 91-357-C, Order No. 91-1107.
4. Affinity received approval of a name change in Docket No. 91-357-C, Order No. 96-354 on May 17, 1996.
5. Network was authorized to provide interexchange services in South Carolina in Docket No. 2001-302-C, Order No. 2002-218 on March 22, 2002.
6. On February 1, 2001, Network US, Inc. and Affinity Corporation entered into a Foreclosure Sale Asset Purchase Agreement. Under the Agreement, CAA, Inc., a wholly owned subsidiary of Network, acquired substantially all of the telecommunications assets of Affinity, including, but not limited to, Affinity's customer accounts.

7. Network and Affinity continue to operate under the certificates granted by this Commission in Dockets No. 91-357-C and 2001-302-C.

8. Network and Affinity's South Carolina customers have experienced no interruption in their service.

9. The asset transfer will be a seamless transaction to Network and Affinity's South Carolina customers.

10. Network and Affinity have the experience, management capability, and financial resources to provide services in South Carolina.

CONCLUSIONS OF LAW

1. Based on the above Findings of Fact, the Commission hereby determines that the Application filed by Network and Affinity requesting Commission approval of a Foreclosure Sale Asset Purchase Agreement on February 2, 2001, will not adversely affect the public interest, and therefore, the Commission approves the requested asset transfer.

IT IS THEREFORE ORDERED THAT:

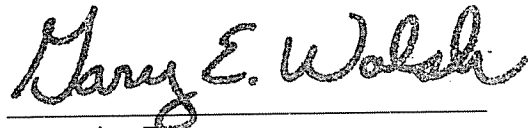
1. The joint Application of Network US, Inc. and Affinity Corporation (Network and Affinity), for approval of the Foreclosure Sale Asset Purchase Agreement is hereby approved.

2. This Order shall remain in full force and effect until further Order of the Commission.

BY ORDER OF THE COMMISSION:


Chairman

ATTEST:


Executive Director

(SEAL)